

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CITY OF HUNTINGTON,**

**Plaintiff,**

**Civil Action No. 3:17-01362**

**v.**

**AMERISOURCEBERGEN DRUG  
CORPORATION, et. al,**

**Defendants.**

**AND**

**CABELL COUNTY COMMISSION,**

**Plaintiff,**

**Civil Action No. 3:17-01665**

**v.**

**AMERISOURCEBERGEN DRUG  
CORPORATION, et. al,**

**Defendants.**

**AFFIDAVIT OF THOMAS D. MILLER, PRIVACY AND SECURITY OFFICER  
OF WEST VIRGINIA'S PUBLIC EMPLOYEES INSURANCE AGENCY**

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, to-wit:

I, Thomas D. Miller, being first duly sworn do depose and say as follows:

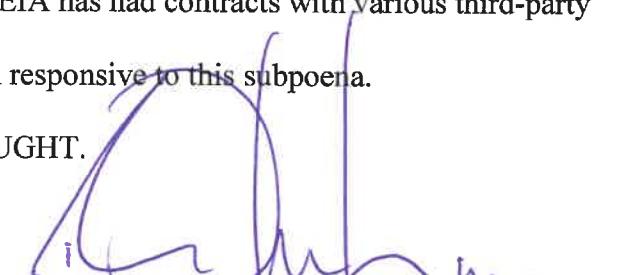
1. As the Privacy and Security Officer of West Virginia Public Employees Insurance Agency, I submit this affidavit in support of "West Virginia Public Employees Insurance Agency's Motion to Quash Subpoena to Produce Documents and Subpoena to Provide Deposition Testimony."

**EXHIBIT  
C**

2. I am fully aware of the facts set forth herein.
3. On March 17, 2020, McKesson Corporation issued to PEIA two broad subpoenas for documents and deposition testimony. The time of issuance coincided with the Covid-19 pandemic, which has drastically impacted the operations of PEIA.
4. In response to the Covid-19 pandemic, PEIA has closed its buildings and the entirety of its staff is either working remotely or has been placed on leave. PEIA employees that are working remotely do not have full access to materials potentially responsive to the document subpoena and/or have limited functionality.
5. The office closures are anticipated to be in effect for at least two weeks and are likely to be lengthened based upon the evolving nature of the pandemic.
6. Many PEIA employees have been diverted from their usual job duties to complete tasks to assist in the State's response to the Covid-19 pandemic.
7. As the Covid-19 pandemic is having a significant effect or impact on health insurers, healthcare providers, and administration by agencies, PEIA is dedicating a high percentage of its time to dealing with the pandemic and the insurance regulatory ramifications thereof.
8. Data collection based upon the language in the subpoenas would take at least four to six months.
9. Data collection would necessitate one employee devoting 50 percent of their time and other employees devoting time to assist and support as needed.
10. The data compilation will be tenuous because the subpoenas command a large amount of data, but have failed to ask for anything specific that assists in developing codes and search parameters.

11. PEIA is unsure as to whether it will be able to develop search parameters to obtain information responsive to McKesson's requests.
12. McKesson's requests regarding "alternative treatments" will likely overlap with prescription claims. PEIA would not be able to determine whether the treatment was, in fact, an alternative to opioids without doing a manual claim file review of tens or hundreds of thousands of claims, possibly more.
13. Many of PEIA's pre-2000 materials are on microfiche.
14. Many years of PEIA's scanned files are in TIF or PDF format that are unsearchable.
15. The subpoena requests could necessitate the review of millions of pages of claim files that contain – in addition to protected health information – Personally Identifiable Information ("PII") that would need to be reviewed and redacted.
16. Since the time of workers' compensation, PEIA has had contracts with various third-party administrator vendors that have information responsive to this subpoena.

FURTHER, YOUR AFFIANT SAITH NAUGHT.



Thomas D. Miller  
Privacy and Security Officer  
WV Public Employees Insurance Agency

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, to-wit:

I, Kenna M. DeRaimo, a Notary Public in and for the county and state aforesaid, do certify that Thomas D. Miller, whose name is signed to the foregoing instrument bearing the date the 30th day of March, 2020, has this day acknowledged the same before me in my said county.

Given under my hand this 30th day of March, 2020.

My commission expires: APRIL 30, 2024.

Kenna M DeRaimo

NOTARY PUBLIC

